HONOURABLE SRI JUSTICE J.CHELAMESWAR
And
HONOURABLE SRI JUSTICE D.APPARAO

23-08-2006

WRIT PETITION No.17405 of 2006

Between:

M/s. Balaji Hotels & Enterprises Limited,
Nellore .. Petitioner

And

1. The Commercial Tax Officer – No.II,
Nellore and others.

..Respondents

***

ORDER: (Per JC, J)**:**

The writ petition is filed with a prayer as follows:-

> "To issue a writ or order or direction particularly one in the nature of Writ of Mandamus granting stay of collection of the disputed tax of Rs.4,35,960/- for the assessment year 1997-98 (APGST) arising in pursuance of the stay rejection order passed by the third respondent in CCT's Ref.No.LV (1)/789/2006 dated 30-06-2006 pending disposal of the appeal before the Sales Tax Appellate Tribunal."

2. The petitioner is a public limited company, engaged in the business of leasing out certain machinery etc., and is an assessee on the rolls of the 1st respondent-Commercial Tax

Officer-No.II, Nellore.

3. It appears that the petitioner leased out certain machinery to the erstwhile A.P. Electricity Board. During the assessment year 1997-98, the lease amount was collected by the petitioner and such transaction is admittedly taxable under Section 5E of the A.P. General Sales Tax Act (for short 'the Act'). For the assessment year 1997-98, the liability tax of the petitioner was determined by the 1st respondent by his proceedings dated 22-12-1999. However, by subsequent proceedings dated 11-08-2000, the 1st respondent passed orders forfeiting an amount of Rs.4,35,960/- by exercising the powers under Section 30C of the Act. Aggrieved by the order of forfeiture, the petitioner carried the matter in appeal before 2nd respondent-Appellate Deputy Commissioner (CT), Guntur, which was dismissed by an order dated 13-03-2003. Therefore, the petitioner carried the matter further appeal before the Sales Tax Appellate Tribunal. The appeal is said to be pending. During the pendency of the appeal, the petitioner sought stay of the order of forfeiture referred to earlier before the 3rd respondent-Joint Commissioenr (CT) (Legal), Hyderabad. The said application was rejected by the 3rd respondent on 30-06-2006. Hence, the present writ petition.

4. Heard the learned Government Pleader for Commercial Taxes.

5. The material on record broadly indicates that the respondents are of the opinion that the petitioner collected amounts higher than the amount what he is entitled to collect towards tax liability. Whether such an opinion is justified on the facts or not is not the matter to be decided in the present writ petition.

6. Admittedly, the petitioner paid Sales Tax @ 5% for the assessment year 1997-98 under Section 5E of the Act. Whether the petitioner collected higher than the amount what he is entitled to collect towards tax liability from the A.P. State Electricity Board or not is the question to be determined by the appellate authority.

7. In the circumstances, we are of the opinion that the matter can be disposed of directing the respondents not to give effect to the order of forfeiture issued by the 1st respondent-Commercial Tax Officer, No.II, Nellore, dated
11-08-2000 pending final decision by the Tribunal in the appeal preferred by the petitioner.

8. With the aforementioned direction, the writ petition is disposed of at the admission stage. No costs.

J.CHELAMESWAR, J

D.APPARAO, J

August 23, 2006.
Kvr